

Chapter V-7 Quick Reference Guide

SPECIAL IMMIGRANT JUVENILE STATUS FINDINGS IN PROCEEDINGS INVOLVING GUARDIANSHIP PROCEEDINGS¹

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What is Special Immigrant Juvenile Status (SIJS)?²

- Through the Immigration Act of 1990, Congress created Special Immigrant Juvenile Status to provide immigration relief for undocumented immigrant children who have been harmed by a parent and who are the subject of state court proceedings.³ SIJS is a form of federal humanitarian immigration protection created to promote child welfare helping vulnerable immigrant children by providing them the opportunity to apply for legal permanent residence to gain stability, heal and thrive.
- SIJS protects children who cannot be reunited with one or both parents due to abuse, abandonment, neglect or similar harms perpetrated by a parent.⁴
- Federal law **requires** that each application for SIJS include an order from a state court.⁵ The court must have jurisdiction under state law to make determinations about the placement, care or custody of children.

SIJS findings do not constitute an immigration determination, rather are simply factual findings based on state law that are required to be included in the child’s immigration application.

Federal Requirement: State Courts Apply State Law⁶

- To issue a predicate order the state court applies state laws to make each of the specific findings of fact that U.S. immigration laws require that SIJS eligible children obtain from state court judges.

Eligibility Status for SIJS

¹ This publication was developed under grant number SJI-15-T-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

² See Leslye E. Orloff, *Chapter I: Introduction to Special Immigrant Juvenile Status*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SPECIAL IMMIGRANT JUVENILE STATUS BENCH BOOK: A NATIONAL GUIDE TO BEST PRACTICES FOR JUDGES AND COURTS [hereinafter SIJS BENCH BOOK] 1-2 (2017), <http://niwaplibrary.wcl.american.edu/pubs/ch-i-intro-to-sijs/>.

³ See 8 U.S.C. § 1101(a)(27)(J)(i) (2012).

⁴ Parents for SIJS purposes are the child’s natural or adoptive parents and any other relationships recognized as parents under state law. State law, rather than federal law, applies with regard to the definition of parents for SIJS cases. Whomever state law recognizes as a parent is the parent for SIJS purposes. This includes whether or not a step-parent is considered a parent under state law. U.S. immigration law that defines “parent” to include “step-parent” does not apply to SIJS cases. For children born during a marriage, state paternity laws commonly presume the child to be the child of the husband and wife and this presumption establishes paternity. This can result in the state law establishing a parent child relationship between a child and someone who is not the natural or adopted parent of the child.

⁵ This court order containing the findings that the child applying for SIJS needs is often referred to as a “predicate order.”

⁶ See Immigration and Nationality Act (INA) § 101(a)(27)(J) (defining Special Immigrant Juveniles); see also *Eligibility Status for SIJ*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/green-card/special-immigrant-juveniles/eligibility-sij-status/eligibility-status-sij> (last visited Mar. 30, 2018).

- To be eligible for SIJS a child must be: unmarried, in the United States and under the age of 21⁷ at the time of filing the SIJS immigration application, and submit a state court order that contains three findings:⁸
 1. *Finding 1:* The court has exercised jurisdiction as authorized by state law to issue orders regarding the custody, care or placement of an immigrant child;⁹
 - a. Judges may encounter SIJS eligible children in a wide range of state court proceedings including, but not limited to divorce, custody, guardianship, dependency, adoption, child support, protection orders, declaratory judgments, domestication of a foreign order, or delinquency.
 - b. The court order must make findings regarding custody or placement of the child with an individual,¹⁰ an agency, a department of the state, or an entity appointed by the state court. The proceeding can take place in any type of state court including, but not limited to a family, probate, or juvenile court.
 2. *Finding 2:* It is not in the child’s best interest to return to the home country, or last habitual residence, of the child or the child’s parent.
 - a. This finding includes a determination by the state court using the best interest factors under state law that a placement in the child’s, or his parents’, country of nationality or last habitual residence is not in the child’s best interest.
 - b. In making this finding it can be useful to include findings of fact regarding each of the state law best interest factors that the court applied in its deliberation and determination. Using the state best interest factors, the findings should include reasons why the judge granted custody, guardianship or placement to one person and not to other potential custodians. The findings should also include a comparison of services and resources available to the child in the U.S. with those of the home country. Examples include: what types of services, actions, and orders will best serve a child, services that help him heal from trauma, the social, medical, mental health and educational needs of the child, and who is best suited to care for him.¹¹

⁷ Children must obtain findings from a state court that has jurisdiction to enter orders regarding their care and custody. Orders containing SIJS findings must be issued while the child is under the age of majority set by state law, which is often age eighteen. Some state laws may confer jurisdiction over a person who is older than eighteen.

⁸ See INA § 101(a)(27)(J) (defining Special Immigrant Juveniles); see also *Eligibility Status for SIJ*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/green-card/special-immigrant-juveniles/eligibility-sij-status/eligibility-status-sij> (last visited Mar. 30, 2018).

⁹ Menjivar, 29 Immigr. Rep. B2-37, B2-39 (1994), <http://niwaplibrary.wcl.american.edu/pubs/matter-of-menjivar/> (“The acceptance of jurisdiction over the custody of a child by a juvenile court, when the child’s parents have effectively relinquished control of the child, makes the child dependent upon the juvenile court, whether the child is placed by [h]e court in foster care or, as here, in a guardianship situation.”).

¹⁰ The original SIJS statute required that the child be dependent on the state court and eligible for long-term foster care. The statute was amended to clarify that this includes the placement of the child in the care or custody of an individual to allow children living with family or next of kin to remain in their homes. The language remains reminiscent of traditional dependency language and some courts have mistakenly interpreted that to mean they can only make SIJS findings in dependency proceedings. See Memorandum from Donald Neufeld to Field Leadership of U.S. Dep’t of Homeland Sec., *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions 2* (Mar. 24, 2009)

(<http://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemotvpra2008-03-04-09/>) (“In short, the TVPRA 2008 removed the need for a juvenile court to deem a juvenile eligible for long-term foster care”); see also U.S. CITIZENSHIP & IMMIGRATION SERVS., IMMIGRATION RELIEF FOR ABUSED CHILDREN: INFORMATION FOR JUVENILE COURT JUDGES, CHILD WELFARE WORKERS, AND OTHERS WORKING WITH ABUSED CHILDREN (2014), http://niwaplibrary.wcl.american.edu/pubs/uscis_sijs_brochure/ (stating that “SIJ eligible children may . . . [b]e living with a foster family, an appointed guardian, or the non-abusive parent” and noting that the highlighted examples are not an exhaustive list) (emphasis added). For immigration law purposes, therefore, a juvenile is dependent upon the state court if he or she “[h]as been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court.” 8 C.F.R. § 204.11(c)(6) (2012). See also Menjivar, 29 Immigr. Rep. B2-37, B2-39 (1994), <http://niwaplibrary.wcl.american.edu/pubs/matter-of-menjivar/> (“The acceptance of jurisdiction over the custody of a child by a juvenile court . . . makes the child dependent upon the juvenile court, whether the child is placed by [h]e court in foster care or, as here, in a guardianship situation.”).

¹¹ A list of factors that are helpful when comparing what assistance, support, treatment or other services would be available to help an immigrant child or immigrant crime victim in the United States, compared to an immigrant’s home country, can be found in the DHS policies and regulations discussing extreme hardship in VAWA self-petitioning and VAWA cancellation of removal cases. See Leslye E. Orloff, *Chapter IV: Application of*

- c. Findings must be based on state law. Therefore, include state law citations. Do not cite to federal law.
3. *Finding 3*: Reunification with one or both of the child’s parents is not viable due to abuse, neglect, abandonment, **or** a similar basis under state law;¹²
- a. The federal statute¹³ intentionally does not define abuse, abandonment, or neglect, but rather relies upon the state court judge’s expertise in applying each state law’s definition of these terms.¹⁴ Some states have other provisions in state law that are a “similar basis” for protecting children and making reunification with a parent not viable. These too can serve as a basis for SIJS findings.
- The order should indicate the factual basis for the each of the state court findings.¹⁵
 - Court orders that contain detailed findings of fact regarding the harm the child suffered, that cite state laws being applied, and that discuss the application of state laws to the facts of the case help avoid both DHS requests for additional evidence and delays in the adjudication of the child’s SIJS petition.
 - The state court order does not confer any immigration status on the child.
 - Only federal immigrant officials can grant immigration status to the child.
 - However, without the state court order containing the three required findings the child cannot petition for SIJS.
 - The inability to file may have serious negative consequences for the child’s health, well-being, growth, education, development and the opportunity to remain in the care of nurturing caregivers. In some cases, the inability to obtain SIJS could result in the child’s deportation from the United States.

† SIJS findings are NOT immigration determinations but rather are simply factual findings that will form part of an immigration application to be adjudicated by the Department of Homeland Security’s U.S. Citizenship and Immigration Services.

the Best Interest of the Child Standard in Special Immigrant Juvenile Status Cases, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-15 (2017), <http://niwaplibrary.wcl.american.edu/pubs/application-of-the-best-interest-of-the-child-standard-in-sijs-2/> (listing of these factors and how they could be applied when courts make SIJS findings).

¹² For more information to assist courts making findings regarding the viability of reunification and a discussion of how this standard differs from termination of parental rights, see Leslye E. Orloff, *Chapter II: Details about Special Immigrant Juvenile Status (SIJS) Findings*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 3-7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/details-about-special-immigrant-juvenile-status-sijs-findings/> and Leslye E. Orloff, *Chapter IV: Application of the Best Interest of the Child Standard in Special Immigrant Juvenile Status Cases*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 12-14 (2017), <http://niwaplibrary.wcl.american.edu/pubs/application-of-the-best-interest-of-the-child-standard-in-sijs-2/>.

¹³ Amendments to the INA § 101(a)(27)(J) made under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (Dec. 23, 2008) supersede 8 C.F.R. § 204.11. See *Appendix A: Statutory Provisions Related to Special Immigrant Juvenile Status*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-a-sijs-statutory-and-regulatory-provisions/> (discussing which parts of the regulations were issued prior to 2008 that were not superseded by the statute); see also Memorandum from Donald Neufeld to Field Leadership of U.S. Dep’t of Homeland Sec., *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions 2* (Mar. 24, 2009) (<http://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemotvpra2008-03-04-09/>).

¹⁴ State law definitions of “abuse,” “abandonment,” and “neglect” are to be applied to the factual findings about the abuse the child suffered wherever that abuse occurred in the world, inside or outside of the United States. If the facts of the harm the child suffered would constitute “abuse” under state law, then it is abuse for SIJS findings even when the facts of the abuse occurred in another country. State law is to be used, not the laws of the country in which the abuse occurred.

¹⁵ U.S. Citizenship & Immigration Servs., *Volume 6: Immigrants, Part J, Special Immigrant Juveniles*, in U.S. CITIZENSHIP & IMMIGR. SERVS. POLICY MANUAL (2017), <https://www.uscis.gov/policymanual/Print/PolicyManual-Volume6-PartJ.html>; *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(5) – USCIS Consent*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 8 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

SIJS in Guardianship Proceedings

- When courts award guardianship of a minor to a grandparent, family member or other adult, the court is considering the child's best interest in placing the child in the care and custody of a responsible adult as the child's legal guardian. In guardianship cases involving immigrant children who have suffered abuse, abandonment or neglect by one or both of their parents, courts have the ability to include SIJS findings in its orders.
- SIJS findings are appropriate in cases in which the court is deciding guardianship of an immigrant child who is not a naturalized citizen or lawful permanent resident when the child has been a victim of abuse, abandonment, neglect, or other similar harms defined by state law and the perpetrator was one of the child's natural or adoptive parents.
- State court judges will receive requests for SIJS predicate findings in guardianship cases based on many different fact patterns. Some frequent scenarios include:
 - Uncontested cases in which a grandparent, adult sibling, aunt or other close family member seeks guardianship: this could be a case where an immigrant child flees his country of origin to escape abuse by a parent.
 - Uncontested case where child is apprehended at the border but released by the government to a relative or other sponsor. As part of the release, the sponsor commits to filing appropriate guardianship proceedings in state court.
 - Contested case where the child is removed from the home due to abuse or neglect and child is placed with a relative to care for him.
 - Uncontested case where child was sexually molested by step-parent after biological parent was deported and state placed child with her teacher.
 - **Uncontested guardianship cases filed for a child who is approaching the age of majority:** Courts may not be accustomed to seeing a child approaching the age of majority in an uncontested case but should consider the **best interest** of the child when hearing the case. Many times the guardian may not be aware of the existence of SIJS and may not have legal counsel help navigate the system. In these cases, this could mean that older teenagers approaching their 18th birthday will appear in court in guardianship cases in which they are requesting both guardianship and SIJS findings. Establishing guardianship, even at a late age when it will not continue legally for very long, helps stabilize the life of the child and provide him with important legal protections as he transitions to adulthood. This is particularly important for youth whose trauma experiences have affected their physical, brain and emotional development.¹⁶
 - **Uncontested cases where the child has never met one parent due to early abandonment:** a guardianship proceeding provides the venue to obtain SIJS findings based on abandonment.
 - **Uncontested cases with one parent living abroad and difficult to locate due to abandonment or neglect:** the guardianship process may be the best option for a child in this situation.
 - **Contested guardianship case in which the abusive parent objects:** example of a grandparent or close family member seeking guardianship

Procedural Considerations¹⁷

¹⁶ See Appendix E: *Understanding the Significance of a Minor's Trauma History in Family Court Proceedings*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-e-effects-of-trauma-on-minors-fact-sheet/>.

¹⁷ Children seeking SIJS orders may come before the court in creative ways that the court is not necessarily accustomed to seeing; this is in part because of funding restrictions on representation of abused immigrant children and parents. Depending on an organization's funding, the organization may be limited to whether they can represent the child, the parent, a third party filing on behalf of or in relation to the child, or any combination within. Various forms of government funding are restricted to only the abused litigant, thus barring non-abused parents and third parties from filing guardianship or custody with representation from the agency receiving the funding. The abused child is eligible for representation from

- *Service of Process*: SIJS imposes no additional service requirements. The rules for who must be served and how service is to be effected in a guardianship proceeding are governed by state law. The same service of process requirements apply in cases involving immigrant children seeking SIJS findings as in any other guardianship case.
- Many SIJS eligible children will have had little or no recent contact with the parent or parents who have perpetrated the abuse, abandonment, neglect, or similar harm defined by state law. The perpetrator parent may be still living in the home country and the child may have resettled with the other parent or with a grandparent, family member or caregiver in the United States. The location of the perpetrator parent may be:
 - In the child's country of origin;
 - Unknown to the child and other parent;
 - In a region of the home country that is rural with little formal infrastructure.

These circumstances pose several significant obstacles to meeting the service and notice requirements for guardianship adjudications. Attorneys representing parties seeking guardianship of an SIJS eligible child may need additional time locating the abusive parent. They may not be successful in accomplishing personal service and may need to request court orders authorizing alternative service.¹⁸ Swift decisions by the court on requests for alternative service are very important to ensure that the court is able to take jurisdiction to enter guardianship orders including SIJS findings before the immigrant child ages out of the jurisdiction of the court. This may include:

- Enlisting assistance with service from the parent's country's embassy or consulate;
- Service by publication;
- Orders that soldiers and sailors service is not required because the parent is found to be a foreign national who could not have served in the U.S. Military.¹⁹
- *Guardian and Attorneys Ad Litem (GAL/AAL)*: Federal law does not impose or require any particular decision related to appointment of a *guardian ad litem*. Cases in which children seeking SIJS should be treated in the same manner with regard to decisions to appoint guardian's or attorney's *ad litem* as applies in cases of citizen children. There is no reason to appoint a GAL/AAL for a child seeking SIJS, when the court would not otherwise make such appointment in cases not involving SIJS. It is best practice to require a GAL/AAL when the court would so order under state law in cases that did not involve immigrant parents or children or SIJS predicate findings. Appointing a GAL/AAL for SIJS cases when such appointment would not be made in a case involving citizen children causes unnecessary delay in SIJS cases, and expends limited pro bono legal resources in the community that could better serve cases involving other needy children.
- *UCCJEA and UCCJA*: Children coming before the court seeking SIJS findings will have very different personal stories. Some may have been in the United States for a prolonged period of time. Others may have recently made the journey to flee from abuse or reunite with family. Unaccompanied minors who have been in Department of Homeland Security's custody may have been moved from state to state while searching for

the agency but due to procedural rules, the child cannot file certain cases on their own behalf, and thus the attorney is limited to what kinds of cases they can seek relief for the child.

¹⁸ For more information of service of process options, see Leslye E. Orloff, *Chapter VII: Service of Process in State Court: Cases Seeking Special Immigrant Juvenile Status Findings*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/chapter-vii-service-of-process-in-sijs/>.

¹⁹ See Leslye E. Orloff, *Chapter VII: Service of Process in State Court: Cases Seeking Special Immigrant Juvenile Status Findings*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/chapter-vii-service-of-process-in-sijs/>.

appropriate placement.²⁰ In only a small minority of the SIJS cases might there be a prior custody order in another state or country. When a custody order was issued by a foreign country, the parent granted custody may be requesting that the court recognize the foreign court's custody award. SIJS eligible children may not have been in the state long enough for the state to have become the child's home state for jurisdictional purposes.²¹

- Most states have adopted the Uniform Child Custody and Jurisdiction Enforcement Act (UUCJEA), which requires that a child be present in the state for 6 months to establish home state jurisdiction. Best practices in SIJS cases are:
 - Bringing the guardianship matter and requesting SIJS orders from the child's home state where the child has resided for more than 6 months; or
 - In guardianship cases involving SIJS eligible immigrant children who have been in the state for under 6 months, taking temporary emergency jurisdiction over the child under the state's UCCJEA or the UCCJA based upon the child's presence in the state and upon the child having suffered abuse, abandonment or mistreatment or upon threats to the child's non-abusive parent or the child's sibling when²²
 - No prior custody order has been issued regarding the child,
 - No other state with grounds for continuing custody jurisdiction can be found, or
 - A court with continuing jurisdiction declines taking jurisdiction over the case.
- *Continuing Jurisdiction under State Law over Children 18 and Older:* Generally, the child must be under the jurisdiction of a state court order at the time they file their SIJS application. State law sets the age of majority applicable in SIJS cases. If the court has jurisdiction under state law over a child when the court issues a court order containing SIJS findings, continuing state court jurisdiction over the child is not required if the reason the court's jurisdiction ends is because the child ages out or because the child is adopted or placed in a permanent guardianship. Some state laws allow state courts to have continuing jurisdiction over a child after the age of majority set by state law. When state law grants courts that meet certain criteria continuing jurisdiction over children who reach the age of majority, courts may issue SIJS orders in cases of children who have not turned age 21. Examples of continuing jurisdiction that would allow for issuance of SIJS orders include but are not limited to state statutes governing:
 - Care of children who are incapacitated;
 - Children still enrolled in school (K-12);
 - Adult adoption statutes; or
 - When a child is deemed a dependent of the state including children in foster care.

Best Practices for SIJS Findings in Guardianship Cases

- *Special Immigrant Juvenile Status Statute* requires that the immigrant child:

²⁰ See generally *Who We Serve – Unaccompanied Alien Children*, OFF. REFUGEE RESETTLEMENT (Oct. 2, 2012), <https://www.acf.hhs.gov/orr/resource/who-we-serve-unaccompanied-alien-children> (“An unaccompanied alien child (UAC) is one who has no lawful immigration status in the United States; has not attained 18 years of age, and with respect to whom; 1) there is no parent or legal guardian in the United States; or 2) no parent or legal guardian in the United States is available to provide care and physical custody.”).

²¹ *Child Custody Jurisdiction and Enforcement Act Summary*, UNIFORM L. COMMISSION, <http://www.uniformlaws.org/ActSummary.aspx?title=Child%20Custody%20Jurisdiction%20and%20Enforcement%20Act> (last visited Mar. 30, 2018).

²² *Child Custody Jurisdiction and Enforcement Act Summary*, UNIFORM L. COMMISSION, <http://www.uniformlaws.org/ActSummary.aspx?title=Child%20Custody%20Jurisdiction%20and%20Enforcement%20Act> (last visited Mar. 30, 2018).

“[H]as been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States” AND

“[W]hose reunification with 1 or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law” AND

“[F]or whom it has been determined in administrative or judicial proceedings that it would not be in the alien’s best interest to be returned to the alien’s or parent’s previous country of nationality or country of last habitual residence.”²³

- Location of Harm to Child: The abuse, abandonment, or neglect may have taken place in United States or abroad.
- State law governs:²⁴
 - The types of court proceedings in which state courts can issue orders regarding the custody, placement, or recognition of an existing placement.
 - State court guardianship procedures including jurisdiction, evidentiary rules, and notice rules.
 - When a custody order is final. In issuing final custody orders awarding custody, visitation and providing for the care of an SIJS child that meets the definition of a final or permanent custody order under state law, it is appropriate for courts to adjudicate and issue findings that based on the evidence before the court reunification with the abusive parent is not viable. Once a state court custody order has been finally adjudicated based on a court’s ruling in a contested case, by consent of the parties, or following state default judgment procedures, state law imposes requirements that parties must meet in order to secure modifications of the court’s final custody and/or visitation orders. Most state laws require proof of change in circumstances not anticipated at the time the court issued its custody order.
 - Best Interests: In all cases, the best interest of the child state laws are applied to the facts of the case before the court, and the court decides where and with whom it is in the best interests of the child to live. All state best interest of the child laws are designed to provide the care, treatment, healing, safety, stability, structure, and guidance that will help children become healthy, self-sufficient adults. In making best interest of the child determinations in SIJS cases courts should consider the same breadth of factors that apply to all best interest of the child determinations the court adjudicates.

²³ INA § 101(a)(27)(J).

²⁴ See Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 1(A) – Purpose, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 3 n.1(2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(A) – Determining Eligibility, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 4 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(2) – Parental Unification, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(3) – Best Interests, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(4) – Validity of Order, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6-7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(1) – Dependency or Custody, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 9 n.5 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D) – Juvenile Court Order, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 10 nn.11-14 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 3(A)(2) – Findings, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 12 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

- *Abuse, Abandonment, Neglect or Similar Basis of Harm under State Law*: All SIJS cases will include findings using state law definitions to determine that an immigrant child has been abused, abandoned, neglected or suffered similar harm defined by state law by at least one of the parents. For the purposes of making SIJS findings, these state law definitions are applied to the facts when the harm occurred in the United States and when the harm occurred abroad. These findings will, by their nature, play an important role in the court’s application of state best interest laws in decisions regarding a child’s custody, placement, commitment, or parenting time.
 - *Definitions*: State law controls the definition of the terms “abuse” “abandonment” and “neglect.” The court may use *any* state definition in state law of these terms.²⁵
 - *Similar Basis Under State Law*: Judges may also issue SIJS findings when they find that reunification is not viable for harms articulated in state law that are similar to “abuse, abandonment, or neglect.” Some examples include:
 - *Child endangerment*²⁶ under most state statutes is similar to abuse and often requires more harm to a child than neglect
 - *Domestic violence* is defined in all states to cover child abuse through the perpetration of criminal acts or attempts or threats of criminal acts, or other statutorily defined harms against a person covered by the state domestic violence statute. In all states child abuse perpetrated by a parent is covered by the state domestic violence definition used in state protection order cases. State domestic violence laws often also provide protection for the harm that occurs to children from witnessing domestic violence perpetrated against a parent and in such cases the court can make findings that the presence of domestic violence in the home precludes safe reunification with one or both parents residing in a home where domestic violence is occurring.²⁷
 - *Forced Marriage*:²⁸ Several states have passed laws making forced marriage a crime. Forced marriage of children is considered child abuse and treated as a child abuse crime that involves criminal acts that include rape and sexual assault.
 - *Children present in the state without an adult able to meet a child’s basic needs* under many states’ laws is defined as neglect, including lack of adequate food, clothing, shelter, health care, education or supervision.
 - *Best Practice*: In SIJS cases state courts apply state law to the findings of fact regarding the child and the laws applied in awarding the guardianship. State laws are also used to make each of the SIJS findings. The court order should include citations to the state laws the court order relies upon in its order including the definitions of abuse, neglect, abandonment or similar harm under state law and the best interests of the child factors applied to the guardianship case. Do not quote or cite the federal statute as authority for the required SIJS findings.
- *Level of Detail in Court Order*: The order should contain sufficient detail to clearly state
 - The factual basis under state law for the court’s jurisdiction over the child;

²⁵ For further information see Rafaela Rodrigues & Leslye E. Orloff, *Chapter III: Abuse, Abandonment, or Neglect: The Role of State Law Definitions in Special Immigrant Juvenile Status Findings*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/abuse-abandonment-or-neglect/>; *Appendix K: State Law Definitions of Child Abuse*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-33 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-k-state-law-definitions-of-child-abuse-chart/>.

²⁶ See *Appendix O: States that Define Endangerment Higher than Neglect*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-o-endangerment-chart/>.

²⁷ See *Appendix E: Understanding the Significance of a Minor’s Trauma History in Family Court Proceedings*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-e-effects-of-trauma-on-minors-fact-sheet/>.

²⁸ See *Appendix P: Forced Marriage as Child Abuse: State Laws*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-11 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-p-forced-marriage-chart/>.

- The factual basis and state laws relied upon to reach the findings and conclusions in the court’s order;
 - The citations for the state laws relied upon by the court in making findings and issuing orders; and
 - Information discussing how the court’s order furthers the child’s welfare and best interests.
- *Examples of SIJS Findings in Guardianship.* “After hearing on the Guardianship Proceedings and based on the allegations in the Petition for Appointment of Guardian and Motion for Special Findings, the Court makes the following Order of Special Findings of Fact and Rulings of Law:”

“This Court has jurisdiction pursuant to [cite state statute] to make determinations concerning the care and custody of [minor child]. This Court has legally placed [minor child] in the care and custody of her legal guardian, [name of legal guardian].

Reunification of [minor child] with both of his parents is not viable. [minor child]’s mother, [name of mother], neglected her when she failed to protect her from abuse by her stepfather, left her vulnerable to gang threats and sent her to the United States alone without a plan for her care and custody. [cite state statute]. [minor child]’s mother also abandoned her by failing to attempt reunification or provide any financial support. [cite state statute]. [minor child]’s mother also abused her under [cite state statute] by beating her with a rope. [minor child]’s father, [name of father], neglected and abandoned her as he has abstained from all parental responsibility since [minor child]’s birth. [cite state statute].

This Court further finds that it is not in the best interests of [minor child] to return to [country of origin], her country of nationality, as defined by [cite state statute]. [Minor child]’s mother beat her and allowed her stepfather to beat her as well. She was also unable to protect [minor child] from gang threats against her life, which prevented her from attending school. Unable to provide her with a safe, supportive, and stable life, her mother sent her to the United States alone and without any plan for her care and custody. Now, [minor child] is both emotionally and financially supported by her uncle and legal guardian, [name of legal guardian], and is able to attend school. It is therefore in [minor child]’s best interest to remain in the United States where she has found stability and safety, of which she would be deprived if returned to [home country].”

- *Absent Parent Example:* “Reunification with the child’s parent, *Name*, is not viable due to *Name*’s abandonment of the *Name of Child* as defined in *Code Section*. *Parent’s Name* has had no contact with *Name of Child* since approximately *Date of Last Contact* and has never/since that time has played no role in providing economic support for *Name of Child*.”
- *Abusive Parent Example:* “Reunification with the child’s parent, *Name*, is not viable due to *Name*’s abuse of the *Name of Child*. Findings of abuse of *Name of Child* include [insert some of the key abuse findings]. These findings constitute abuse under *Code Section*. *Non-Abusive Parent’s Name* has been awarded physical and legal custody *Name of Child* and *Abusive Parent’s Name* will be limited [insert the description of the visitation granted (e.g., overnight visitation every other weekend) and including all limitations on visitation with the child (e.g., supervised visitation, use of a visitation center to monitor visitation, supervised visitation exchange)].”

